

Case C-157/02

Rieser Internationale Transporte GmbH

v

Autobahnen- und Schnellstraßen-Finanzierungs-AG (Asfinag)

(Reference for a preliminary ruling
from the Oberster Gerichtshof (Austria))

(Carriage of goods by road — Tolls — Brenner motorway — Prohibition
of discrimination — Discrimination on grounds of the nationality
of the haulier or of the origin or destination of the vehicle)

Opinion of Advocate General Alber delivered on 9 September 2003 I-1481
Judgment of the Court (Sixth Chamber), 5 February 2004 I-1515

Summary of the Judgment

1. *Acts of the institutions — Directives — Direct effect — Possibility of relying on a directive against a legal person governed by private law, controlled by the State, and entrusted with the task of levying tolls for the use of public road networks (Art. 249, third para., EC)*

2. *Transport — Road transport — Tax provisions — Harmonisation of laws — Directives 93/89 and 1999/62 — Tolls and charges for the use of certain infrastructures — Direct effect of the prohibition of discrimination on grounds of the haulier's nationality or of the vehicle's origin or destination — Principle of the link between the toll charges and infrastructure costs having no direct effect*
(Council Directives 93/89, Arts 7(b) and (h), 8(2)(e) and 9, and 1999/62, Arts 7(4) and 9)
3. *Transport — Road transport — Tax provisions — Harmonisation of laws — Directive 93/89 — Tolls and charges levied for the use of certain infrastructures — Directives 93/89 and 1999/62 — Tolls and charges for the use of certain infrastructures — Prohibition of discrimination on grounds of the haulier's nationality or of the vehicle's origin or destination — Applicable to national hauliers*
(Council Directives 93/89, Arts 7(b) and 1999/62, Art. 7(4))
4. *Transport — Road transport — Tax provisions — Harmonisation of laws — Directive 93/89 — Taxes on certain vehicles used for the carriage of goods by road and charges for the use of certain infrastructures — Judgment of the Court of Justice annulling that directive — Effect*
(Art. 231, second para., EC; Council Directives 93/89 and 1999/62)
5. *Transport — Road transport — Tax provisions — Harmonisation of laws — Directive 1999/62 — Charging of heavy goods vehicles for the use of certain infrastructures — Effects of the directive before expiry of the period for transposition — Member States required not to adopt measures liable to compromise the result prescribed by the directive — Direct effect — None*
(Art. 10, second para., EC and Art. 249, third para., EC; Council Directive 1999/62)

1. When contracts are concluded with road users, the provisions of a directive capable of having direct effect may be relied upon against a legal person governed by private law where the State has entrusted to that legal person the task of levying tolls for the use of public road networks and where it has

direct or indirect control of that legal person.

(see para. 29, operative part 1)

2. Article 7(b) of Directive 93/89 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures and Article 7(4) of Directive 1999/62 on the charging of heavy goods vehicles for the use of certain infrastructures which prohibit any discrimination, whether direct or indirect, on the ground of the haulier's nationality or of the vehicle's origin or destination in the imposition of tolls and user charges, may be relied on before the national courts by individuals against State authorities so far as concerns the calculating of tolls for vehicles having a laden weight of at least 12 tonnes used for the carriage of goods when the directives have not been transposed, or have been imperfectly transposed, into domestic law.

Article 7(h) of Directive 93/89 and Article 7(9) of Directive 1999/62, in contrast, which provide respectively for toll rates and weighted average tolls to be related to the costs of constructing, operating and developing the infrastructure network concerned, may not be relied upon by individuals against State authorities, for they set the Member States general guidelines for calculating toll dues, but do not provide any specific mode of calculation

and leave the Member States very broad discretion in that regard.

(see paras 35-36, 38, 40, 41, 44, operative part 2)

3. Like the hauliers of the other Member States, national hauliers may rely, as against their State, on the prohibition of discrimination, whether direct or indirect, laid down in Articles 7(b) of Directive 93/89 on the application by Member States of taxes on certain vehicles used for the carriage of good by road and tolls and charges for the use of certain infrastructures and Article 7(4) of Directive 1999/62 on the charging of heavy goods vehicles for the use of certain infrastructures. It is in order to avoid any form of distortion of competition as between transport undertakings in the Member States that those provisions prohibit, in the application of user charges and tolls, not only discrimination based directly or indirectly on the nationality of hauliers but also that based on the origin or destination of the vehicle.

(see paras 51, 52, 54, operative part 3)

4. Although the literal meaning of the judgment in Case C-21/94 *Parliament v Council* annulling Directive 93/89 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures is that the effects of that directive are preserved until the adoption of new legislation in that sphere, that judgment must, however, be understood to mean that the effects of Directive 93/89 were to be preserved until the date of entry into force of Directive 1999/62 on the charging of heavy goods vehicles for the use of certain infrastructures, which replaced it, that is to say, 20 July 1999. In connection with an action for annulment, the purpose of preserving the effects of a legal act annulled by the Court is not to allow a legal vacuum to subsist until the annulled act has been replaced by a new act. That objective can be attained if the legal act annulled continues to produce legal effects until the new act does so.

(see paras 59-61, operative part 4)

5. It follows from the application of the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC that, during the period prescribed by a directive for its transposition into national law, the Member State to which it is addressed must refrain from taking any measures

liable seriously to compromise the result prescribed by the directive. The fact remains that in proceedings brought by individuals relying on a directive's direct effect, national courts are bound to refrain from applying pre-existing national rules contrary to that directive only after the period prescribed for its transposition has expired. Indeed, since the purpose of such a period is, in particular, to give Member States the necessary time to adopt transposition measures, they cannot be faulted for not having transposed the directive into their internal legal order before expiry of that period.

With more particular regard to Directive 1999/62 on the charging of heavy goods vehicles for the use of certain infrastructures, during the period from the date of its entry into force until the expiry of the period prescribed for its transposition, that is to say, from 20 July 1999 to 1 July 2000, the Member States were required to refrain from taking any measures liable gravely to jeopardise the attainment of the result prescribed by that directive against the Member States before national courts in order to have a pre-existing national rule incompatible with the directive disapplied.

(see paras 66-69, operative part 5)